

BEFORE THE
PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA

DOCKET NO. 2008-_____-E – ORDER NO. 2008-_____

IN RE: APPLICATION BY SOUTH CAROLINA)
GENERATING COMPANY, INC. FOR AUTHORITY)
TO ENTER INTO A NOTE AGREEMENT TO)
DEFRAY THE COST OF CERTAIN CAPITAL)
EXPENDITURES)
)

PROPOSED
ORDER GRANTING
APPLICATION

1. INTRODUCTION

This matter comes before the Public Service Commission of South Carolina (the "Commission") by way of an Application filed on April 21, 2008, by South Carolina Generating Company, Inc. ("GENCO"), a corporation organized under the laws of South Carolina. The Application was filed pursuant to §58-27-1710, S.C. Code of Laws (1976) as amended and 26 S.C. Code of Reg. 103-823 (1976) as amended for power and authority to enter into a Note Agreement (the "New Note Agreement") with Prudential Investment Management, Inc. ("Prudential") and other insurance companies (or their affiliates) which may be identified by Prudential or its affiliates (collectively, the "New Note Purchasers") providing for the issuance thereunder from time to time of not exceeding One Hundred Sixty Million Dollars (\$160,000,000) of notes (the "New Notes"), and to enter into modifications, amendments, and extensions from time to time thereto and to the Note Agreement dated as of August 21, 1992 between GENCO and Prudential Life Insurance Company of America, as amended (the "1992 Note Agreement") and the Note Agreement dated as of February 11, 2004 between GENCO and Prudential Life Insurance Company of America and the other insurance company purchasers

named therein (the "2004 Note Agreement," and together with the 1992 Note Agreement, the "Existing Note Agreements") in connection therewith. The net proceeds from the sale of the New Notes, together with internally generated funds and the proceeds of tax-exempt revenue bonds of the South Carolina Jobs-Economic Development Authority expected to be loaned to GENCO (the "Bond Loan"),¹ will be applied to finance the cost of additional construction expenditures in the amount of approximately \$140.4 million and to repay advances for such purposes aggregating approximately \$58.4 million at February 29, 2008. Such advances were made by SCANA Corporation, a South Carolina corporation ("SCANA") through the utility money pool ("Utility Money Pool"), subject to the applicable limits on short-term borrowings authorized by Order of the Federal Energy Regulatory Commission.

2. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. BUSINESS

GENCO is a wholly-owned subsidiary of SCANA and an affiliate of South Carolina Electric & Gas Company ("SCE&G"). SCE&G is an electric utility operating in the State of South Carolina, serving the central, southern and southwestern portions of the State with electric service and it also delivers natural gas service throughout its service territory which encompasses all or part of 35 of the 46 counties in South Carolina and covers more than 23,000 square miles. GENCO owns the Arthur M. Williams generating station (the "Plant"). Pursuant to a Unit Power Sales Agreement, SCE&G purchases from GENCO all of the power generated by the Plant. In Docket No. 92-391-E and Docket No. 2003-355-E, the Commission authorized GENCO to enter into the Existing Note Agreements to refinance certain existing long-term debt and finance

¹ GENCO expects to apply to the Commission for authorizations to incur the Bond Loan at a later date.

additional construction expenditures. The principal amount currently outstanding under the Existing Note Agreements is \$119.3 million.

B. ADDITIONAL CONSTRUCTION EXPENDITURES

GENCO proposes to borrow under the New Note Agreement a principal amount not exceeding \$160 million to defray a portion of the cost of construction and installation of flue gas desulfurization equipment (a wet scrubber) and certain other equipment at the Plant (the "Pollution Control Facilities"). The Pollution Control Facilities will be capable of reducing sulfur dioxide ("SO₂") emissions at the Plant by at least 95%. As a result of the Clean Air Act of 1990 and the subsequent Clean Air Interstate Rule of 2005, the Environmental Protection Agency and the South Carolina Department of Health and Environmental Control ("DHEC") required the reduction of SO₂ emissions from coal-fired generating facilities. The State Implementation Plan developed by DHEC to address this requirement limits the annual number of SO₂ tons that may be emitted. GENCO has elected for economic reasons to construct a wet scrubber to meet its compliance requirements. GENCO's capital expenditures for SO₂ reduction and other environmental expenditures, in 2004 and through 2007 have totaled approximately \$69.6 million, substantially all of which expenditures have been funded by advances from SCANA through the Utility Money Pool, from amounts funded under the 2004 Note Agreement and from operating revenues of GENCO. From January 1, 2008 through December 31, 2011, GENCO expects to spend an additional \$196.3 million in environmental capital expenditures.

C. STRUCTURE OF THE TRANSACTION

The proposed transaction is intended to provide permanent financing for a portion of the cost of the Pollution Control Facilities and to reimburse SCANA through the Utility Money Pool for amounts previously advanced to GENCO for such construction costs. The structure of the transaction will be substantially similar to the structure of the Existing Note Agreements and will maintain the same relationships among SCE&G, GENCO, SCANA and the holders of the Notes issued and outstanding under the Existing Note Agreements (the "Existing Note Holders") as currently found under the Existing Note Agreements.

i. New Note Agreement and New Notes

The proposed New Note Agreement will provide for the issuance thereunder from time to time of New Notes having a maturity of up to twenty (20) years bearing interest at the United States Treasury rate corresponding to the weighted average life of the New Notes plus an indicative spread ranging from 220 to 300 basis points (2.20% to 3.00%) per annum, depending upon the weighted average life of the New Notes as negotiated by the New Note Purchasers and GENCO at or about the time of issuance of the New Notes, with quarterly or semiannual interest payments and amortization of the principal in amounts to be negotiated. For the purposes of the pro forma presentation in Exhibit A of GENCO's Application, the interest rate of the New Notes has been assumed to be 6.25% (which assumes a ten-year weighted average life).

ii. The Mortgage and Security Agreement

The New Note Agreement and the New Notes will be secured by a mortgage lien on the Plant, including the Pollution Control Facilities, through an amendment or restatement of the

Amended and Restated Mortgage and Security Agreement dated as of February 11, 2004 between GENCO and The Bank of New York Trust Company, N.A., as collateral agent (the "Collateral Agent"), on a parity with the mortgage lien and security interest securing the Existing Note Agreements and the Existing Notes. The New Notes shall be *pari passu* with amounts outstanding under the Existing Note Agreement and will not be structurally subordinated to any other indebtedness, including the outstanding balance under the Existing Note Agreements.

iii. The Inducement Letter

As was previously executed in connection with the Existing Note Agreements and in recognition of the fact that SCE&G would benefit from the long-term financing of the Plant, which SCE&G operates for GENCO under the Operating Agreement and from which SCE&G purchases all of its electric power output through a Unit Power Sales Agreement, SCE&G would enter into an Inducement Letter with the New Note Purchasers, or an agent therefor, stating, among other things, that it will maintain for the term of the New Notes the Unit Power Sales Agreement and the Operating Agreement.

iv. The Title Indemnity Agreement

SCE&G would enter into a Title Indemnity Agreement in favor of the New Note Purchasers, or an agent therefor, or amend or restate the existing Indemnity Agreements, dated as of August 21, 1992 and February 11, 2004 between SCE&G and the Existing Note Holders, that essentially provides to the Existing Note Holders the benefit of SCE&G's existing obligations under its General Warranty Deed of Conveyance of 1984 by which it transferred the Plant to GENCO.

v. The Subordination Agreement

SCANA would enter into a Subordination Agreement in favor of the New Note Holders, or amend or restate the existing Subordination Agreements dated as of August 21, 1992 and February 11, 2004 among SCANA, GENCO and the Existing Note Holders, providing that in certain instances the indebtedness of GENCO to SCANA or other affiliates would be subordinated to GENCO's obligations and indebtedness to the New Note Holders under the New Note Agreement and the outstanding New Notes.

vi. SCANA Guarantee

SCANA would also enter into a Guarantee Agreement guaranteeing the obligations of GENCO to the holders of the New Notes if the market conditions deemed it necessary or provide other types of security support as appropriate.

**D. APPLICATION OF PROCEEDS AND COMPLIANCE
WITH PSC ORDER NO. 91-72**

In compliance with the provisions of Order No. 91-72, dated January 18, 1991, Docket No. 91-032-E, GENCO has submitted financial statements and information required by the Order.

After investigation by the South Carolina Office of Regulatory Staff and upon full consideration by the Commission, the Commission is of the opinion, and so finds, that the matters set forth in the Application and the exhibit thereto are proper; that the purpose of the proposed use of the proceeds by the Company of the New Notes are proper; and that the proposal to issue the New Notes is reasonable and proper.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED:

(1) GENCO is granted a Certificate of Authority to (a) issue up to one hundred sixty million dollars (\$160,000,000) of New Notes which is reasonably necessary to the financing of the construction herein described, and (b) that the value of the Pollution Control Facilities will be equal to or in excess of the amount of loan proceeds to be applied for that purpose and that the value of the Pollution Control Facilities to be financed will be equal to or in excess of the amount of the loan proceeds to be applied.

(2) GENCO is authorized and empowered to negotiate the terms of the transaction as described herein including, but not limited to, the terms of the New Note Agreement, and to make such changes in the instruments and to negotiate and to enter into other related or supplemental agreements as are reasonably necessary, to consummate the transactions described herein or hereafter to maintain or preserve such transactions, and to enter into any modifications, amendments and extensions thereto.

(3) GENCO is authorized and empowered to execute and deliver the New Note Agreement and related instruments and modifications, amendments, and extensions from time to time thereto.

(4) GENCO is authorized and empowered to execute and deliver any amendments, modifications, and extensions to the Existing Note Agreements and related instruments as may be necessary in connection with the issuance of the New Notes.

(5) GENCO shall file with the Commission conformed copies of the instruments (and any amendments, modifications and extensions thereto) in the final forms in which they are executed.

(6) The maximum amount of borrowings and the character of the securities issued thereby, as proposed, are reasonably necessary for the purpose for which they are to be issued as described above.

(7) This Order shall not, in any way, affect or limit the right, duty or jurisdiction of the Commission to further investigate and order revisions, modification or changes with respect to any provisions of this Order in accordance with the law.

(8) This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:

ATTEST:

Chairman

(SEAL)